

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Carl R. Schedler, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**NEW YORK CENTRAL RAILROAD, Eastern District
(except Boston Division)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, New York Central Railroad Company, Eastern District (except Boston Division):

1. That the Buffalo Stock Yards violated the Rules Agreement when it discontinued all feeding and watering of in-transit live stock at Buffalo, New York, on September 21, 1957, and by unilateral action transferred this work to other employees of the New York Central Railroad not covered by the scope of the Buffalo Stock Yard Agreement.

2. That the Buffalo Stock Yards (New York Central Railroad-Buffalo) be required to fulfill their contractual obligation by restoring the work to the following employees who were furloughed as a result of the violation:

F. Loomer	D. G. Cannon	R. J. Nowak
R. D. Roehner	J. E. Kottas	E. F. Gospodarski
A. B. Barbuto	E. C. Cieslik	B. C. Cannon
R. A. Przywara	S. D. Majewski	R. S. Drozdowski
R. T. Kensy	F. P. Kottas	J. J. Nowak
E. J. Laskowski	J. W. Gmerek	A. E. Przywara
G. Flens	J. B. Lipiecki	R. N. Green
C. Staniszek	E. E. Yund	

3. That because the work was transferred by the unilateral action of The Buffalo Stock Yards (New York Central Railroad-Buffalo) without attempting to negotiate with the Brotherhood to provide for a fair settlement, the employees named in part 2 of the claim, above, who are adversely affected, be reimbursed in full for

all wage losses sustained on September 21, 1957, and each subsequent day thereafter until the violation is corrected.

4. That the claim is payable because of the failure of The Buffalo Stock Yards (New York Central Railroad-Buffalo) to fully comply with Rule 39—Time Limit on Claims—by going beyond the 60-day limit in denying the claims of the claimants named above in part 2.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 21, 1957, the following regular positions covered by the Scope Rule of the Clerks' Agreement with the Buffalo Stock Yards (New York Central Railroad-Buffalo) hereinafter referred to as the Management, were in effect and covered by employees on a seniority roster exclusively for the operation of stock yard facilities:

2 Foremen	\$402.48	per month
1 Clerk	376.59	" "
1 Clerk	389.09	" "
1 Yarder	1.972	per hour
2 Helpers	1.924	" "
6 Laborers	1.90	" "
6 Relief Laborers	1.972	" "
2 Asst. Foremen	2.008	" "

On September 21, 1957, the Management arbitrarily and unilaterally deprived the employees of their contractual rights to these positions by transferring the feeding and watering of in-transit live stock from The Buffalo Stock Yards to other points on the New York Central System without affording them an opportunity to follow their work.

The Management is having portions of the work performed by contractors at Bellfontaine, Ohio, and at Selkirk, N. Y., and by employees at DeWitt, N. Y. and Collinwood, Ohio, none of whom are embraced by the scope of our Agreement. As a result, the employees covered by the Agreement are furloughed. Moreover, claims were presented in behalf of all employees adversely affected and the Management failed to give a proper 60-day notice of their denial in conformity with the terms of Rule 39 of the Agreement.

Efforts to have the matter properly settled have been progressed to and including the official of Management designated to render fiscal decisions, and have been denied.

POSITION OF EMPLOYEES: There is in evidence a current Rules Agreement between the parties, from which the following rules are quoted:

"RULE 1—SCOPE:

(a) These rules govern the hours of service and working conditions of all positions at the Buffalo Stock Yards except the following:

- 1 Supervising Agent
- 1 Live Stock Agent

In order to support the General Chairman's contention that the time limit rule was violated it would be necessary to assume that the 60-day time limit continued from the time the General Chairman appealed the case to Mr. Leenhouts. After Mr. Leenhouts advised the General Chairman that the management of Buffalo Stock Yards was transferred to the Division Superintendent of the Operating Department it was the responsibility of the General Chairman to progress the claim with the proper officer, i.e., Division Superintendent.

The General Chairman must have realized his responsibility because on February 3, 1958 he addressed Division Superintendent Johnston and furnished him with a copy of the General Chairman's letter of December 19, 1957 appealing from Mr. Mustard's denial of the claim.

In the handling of this claim, the Carrier complied strictly with the time limit provisions of Rule No. 39. Each of Carrier's officers authorized to handle appeals denied the claim within 60 days from the receipt of the written claim. When the Organization appealed the claim to the Director of Agricultural Sales, he notified the Organization promptly that he no longer had jurisdiction over the Buffalo Stock Yard.

The Carrier has no obligation under Rule No. 39 to progress claims. The Carrier is required only to deny in writing within 60 days of receipt claims that have been presented in writing to the officer authorized to receive such claims. A review of the facts show conclusively that in the handling of this dispute the Carrier complied strictly with the provisions of Rule No. 39 of the Agreement.

CONCLUSION

The Carrier has shown that all work belonging to employees at Buffalo Stock Yards is performed by them. The claim of the Organization that all the work should be promptly restored to Buffalo Stock Yards is not supported by the Agreement or the facts. The Carrier has shown that the changes in operation was the result of technical improvements and modernization of equipment. Carrier complied with the time limit rules in the handling of the dispute on the property.

The Carrier submits that the claim is without merit and should be denied in its entirety.

All facts and arguments contained herein have been made known to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective September 21, 1957 the Carrier abolished some 21 positions in the Buffalo Stock Yards covered by the Agreement. On November 15, 1957 the Organization filed a claim contending the Agreement was violated because the work was transferred to persons or employees not subject to the Buffalo Stock Yards Agreement. On November 18 the Carrier declined the claim in writing. The claim presented by the Organization requests restoration of the work and reimbursement for all wages lost since September 21, 1957. The Organization contends that the claim is proper and payable because the Carrier did not fully comply with Rule 39—

Time Limit on Claims—as it went beyond the 60-day limit in denying the claim.

The Organization's contention that the Carrier violated the time limit provisions of Rule 39 is to the effect that its appeal from the denial of the original claim on December 19, 1957 was not disallowed by the Division Superintendent until February 28, 1958. The evidence discloses that on December 27, 1957 a Carrier official notified the Organization that the management of the Buffalo Stock Yards had been transferred to the Division Superintendent of the Buffalo Division. On February 3, 1958 the Organization presented the claim in writing to the Division Superintendent who in turn denied this claim in writing on February 28, 1958.

The hiatus which appears to be the cause for the Organization's position, that the time limits requirement has been violated by the Carrier, is the December 27, 1957 letter of the former manager of the Buffalo Stock Yards who advised the General Chairman that he was no longer the manager but that the responsibility had been transferred to another Carrier official, and indicated the General Chairman's letter was being referred to that official. This letter does not pass on the merits of the claim. Again on January 22, 1958 the former manager wrote to the General Chairman stating that correspondence should be directed to the Superintendent and adding that he could see no basis for the claim. As already pointed out, the General Chairman on February 3, 1958 wrote to the Superintendent again making the claim, and this claim was denied on February 28, 1958 by the Superintendent. From which of these dates does the 60 days start running? The Organization argues that the time starts running from the date of its December 19, 1957 letter and would expire about February 19, 1958. The Carrier contends that the appeal was properly made to the proper officials on February 3, 1958 and denied on February 28, 1958, well within the 60 day limit provided for in the Agreement.

It seems to us that it is the duty of the Organization to properly appeal a claim to the Carrier official authorized to receive same, and its failure to do so cannot transfer the responsibility to the Carrier. There is no evidence in this case that the Carrier waived the requirement for appealing claims to the proper authorized official. The Organization was put on notice that there had been an organizational change by Carrier and that a new official was responsible for receiving such claims. This was done by Carrier's letter of December 27 and at that point the Organization had plenty of time to perfect its appeal but did not do so and waited until February 3, 1958 to appeal. When the appeal was finally directed to the proper official it was denied well within the 60 day limit rule. We find that the Carrier did not violate the requirements of Rule 39.

As to the merits of this controversy, we are convinced by the evidence in the record that the changes made by the Carrier were the result of technical improvements and modernization of equipment and its operational needs no longer required the services of the Claimants. This Division in many Awards has rather consistently upheld Carrier's right to abolish unneeded positions. The record in this case does not indicate any good reason for deviating from that general finding adopted by this Board.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October, 1960.

DISSENT TO AWARD NO. 9608, DOCKET CL-11302

The majority here has committed grievous error in holding that the responsibility is upon the Organization to determine the proper appeals officer of the Carrier in view of Section 2, Third, Section 3, First (i) of the Railway Labor Act and Rule 39.

Section 2, Third, provides:

“Representatives, for the purpose of this Act, shall be **designated** by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. * * *” (Emphasis supplied.)

Section 3, First (i) provides:

“The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, * * *, shall be handled in the usual manner up to and including the chief operating officer **designated** to handle such disputes; * * *.” (Emphasis added.)

Webster's New Collegiate Dictionary defines the word “designate” as “1. To mark out and make known; to indicate; show; specify. 2. To name; characterize. 3. To indicate or set apart for a purpose.”

It is clear from this definition that Carriers are not only obligated to designate their representatives for the purpose of the Act, but also have the responsibility of notifying the representatives of the Organization the officials that have been so designated. Carrier cannot withhold such knowledge, as was the case here, until after a claim has been appealed to a designated officer and then claim that he is not the proper appeals officer.

The record shows that an appeal was properly made on December 19, 1957, to an official that had been designated by the Carrier as the official to whom appeals must be made from decisions of the General Superintendent of the Buffalo Stock Yards. He advised the General Chairman on December 27, 1957, that he was no longer the proper designated official to whom an appeal could be made under the confronting circumstances, however, he would refer the matter to the proper officer, the Superintendent of the New York Central System, Buffalo, N. Y. The latter did not deny the claim until February 28, 1958, which was in excess of the 60 days provided in Rule 39 and, in accordance therewith, claim should have been allowed as presented. See Awards 4529, 6361, 6789, 7713, 8101, 8318, 8412, 9205, Second Division Award 3280. It might be added that the General Chairman's letter of February 3, 1958, was nothing more than a tracer, not a claim.

This Board has no authority to relieve a Carrier of its responsibility under the Railway Labor Act, nor has it the power to extend the 60 day period provided in Rule 39 for the disallowance of a claim.

The last paragraph of the "Opinion" is not based upon the facts of record, as the work of feeding and watering of in-transit livestock was transferred from the Buffalo Stock Yards to employes of the New York Central Railroad at other locations without negotiation and agreement, thereby violating the Clerks' Agreement with the Buffalo Stock Yards Company. Naturally, there was no further need for positions at the latter location because the work had been unilaterally transferred to employes under another Agreement. Twenty-three employes were thereby wrongfully deprived of their means of a livelihood, their seniority rights abrogated without due process, and such act has been erroneously sanctioned in this award.

The award is patently erroneous and for that reason I dissent thereto.

/s/ J. B. Haines

J. B. Haines

Labor Member